Yusuf bin Awang & Ors v Datuk Bandar Majlis Bandaraya Shah Alam & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–2 OF 2007(B)
ABDUL HAMID MOHAMAD, NIK HASHIM AND AZMEL FCJJ
1 OCTOBER 2007

Contract — Building contract — Breach — Town and Country Planning — Whether Essential (Clearance of Squatters) Regulations 1969 inconsistent with Street Drainage and Building Act 1974 and Town and Country Planning Act 1976

Contract — Building contract — Breach — Town and Country Planning — Whether failure to comply with s 72 of the Street Drainage and Building Act 1974 and s 30 of the Town and Country Planning Act 1976 first renders Regulation 10 of the Essential (Clearance of Squatters) Regulations 1969 null and void

The appellants are individuals occupying two pieces of land known as GRN 43019, Lot No 37448 and GM 1849, Lot No 17494 Mukim Kapar, Daerah Klang, Selangor (the 'said property'). At the material time the owner of the said property was a company named Hock Hup Developments Sdn Bhd (now renamed as Ken Rimba Jaya Sdn Bhd). On 15 October 2003, the respondents served notices pursuant to Regulation 10 of the Essential (Clearance of Squatters) Regulations 1969 ('the said Regulations') on the first to the ninth appellants. On 16 October 2003, similar notices were served on the 10th to the 12th appellants. These notices basically informed the appellants that they had constructed or were occupying squatter huts on the said property and had committed an offence under the said Regulations.

Further, the appellants were required within seven days from the date of the notices to remove any person or moveable property and demolish their respective squatter huts. It was stated in the notices that if they failed to comply with the notice, the respondents would take the necessary action without further notice to the appellants. On 7 July 2004, the High Court granted the declaration prayed for by the appellant, together with the injunction that the notices pursuant to the said Regulations were null and void.

On an appeal by the respondents, the Court of Appeal by a majority decision on 9 February 2007 reversed the decision of the High Court and set aside the orders which had been granted by the High Court. Hence, this appeal to the Federal Court.

Held, dismissing the appeal:

(1) The first point that needed careful consideration was whether the structure or construction occupied by the appellants came within the meaning of 'squatter hut' under reg 2 of the said Regulations (see para 10).

(2) Having regard to the facts and circumstances of this case the Federal Court had no difficulty in concluding that the buildings erected on the said Property come within the meaning of 'squatter hut' as defined under reg 2 because the appellants were unable to show that the said building were erected in accordance with a plan approved by the local authority or had been issued with a licence (see para 11).

(3) The contention that the appellants had been in occupation of the land without any interruption from the landowner would not help to change the status of the buildings from squatter huts in lieu of the necessary approvals. Even if the buildings were constructed with the consent of the land owner, so long as they were not in accordance with the plan approved by the local authority they would still come within the meaning of 'squatter hut' under reg 10 (see para 11).

(4) Despite the fact that s 72 of the Street Drainage and Building Act 1974 and s 30 of the Town and Country Planning Act 1976 both requiring a 30 day period to be given insofar as requisition notices are concerned, it is also crucial to remember that:

(a) The existence of the said Regulations were brought about by virtue of Ordinance No 1 and Ordinance No 2 Emergency (Essential Powers) Ordinance 1969, which was subsequently repealed by the Emergency (Essential Powers) 1979 which came into force on 20th February 1979 ('the 1979 Act') (see para 15);

(b) Section 2(4) of the 1979 Act clearly states that such regulations 'shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution of any State' (see para 17);

(c) The said Regulations have never been repealed (see para 18).

(5) The court was of the view that the said Regulations shall have effect notwithstanding the provisions of any other written law particularly the Street Drainage and Building Act 1974 and Town and Country Planning Act 1976 (see para 19).

(6) Under such circumstances, the said Regulations shall have effect notwithstanding the provisions of any other written law. For the reasons mentioned above, this court arrived at the finding that the said notice which was derived from the said Regulations was validly issued and enforceable in law notwithstanding the provisions of s 72 of the Street Drainage and Building Act 1974 and s 30 of the Town and Country Planning Act 1976 (see para 19).

[Bahasa Malaysia summary

Perayu-perayu adalah individu yang mendiami dua bidang tanah yang dikenali sebagai GRN 43019, No. Lot 37448 dan GM 1849, No. Lot 17494 Mukim Kapar, Daerah Klang, Selangor ('Hartanah tersebut'). Pada setiap masa material pemilik Hartanah tersebut adalah sebuah syarikat bernama Hock Hup Developments Sdn Bhd (sekarang dinamakan sebagai Ken Rimba Jaya Sdn Bhd). Pada 15 Oktober 2003, responden-responden telah menyerahkan notis-notis menurut Peraturan 10 Peraturan-peraturan (Pembersihan Setinggan-setinggan) 1969 ke atas perayu pertama sehinga Kesembilan. Pada 16 Oktober 2003, notis-notis sama telah diserahkan ke atas perayu-perayu ke-sepuluh hingga kedua belas. Notis-notis ini pada dasarnya telah memaklumkan kepada perayu-perayu bahawa mereka telah membina atau telah mendiami pondok-pondok setinggan di atas hartanah tersebut dan telah melakukan satu kesalahan di bawah peraturan-peraturan tersebut.

Selanjutnya, perayu-perayu dikehendaki dalam tempoh tujuh hari daripada tarikh notis-notis untuk memindahkan sebarang orang atau harta boleh alih dan meruntuhkan pondok-pondok setinggan masing-masing. Ia menyatakan dalam notis-notis bahawa jika mereka gagal untuk mematuhi notis, responden-responden akan mengambil langkah-langkah perlu tanpa sebarang pemberitahuan kepada perayu-perayu. Pada 7 Julai 2004, Mahkamah Tinggi telah memberikan perisytiharan sepeti dipohon oleh perayu, bersama dengan injunksi bahawa notis-notis menurut peraturan-peraturan tersebut adalah batal dan tidak sah.

Semasa rayuan oleh responden-responden, Mahkamah Rayuan dengan keputusan majoriti pada 9 Februari 2007 mengakaskan keputusan Mahkamah Tinggi dan mengenepikan perintah-perintah yang telah diberikan oleh Mahkamah Tinggi. Justeru, rayuan kepada Mahkamah Persekutuan.

Diputuskan, menolak rayuan:

(1) Perkara pertama yang perlu diberikan pertimbangan sewajarnya adalah

sama ada struktur atau pembinaan yang dijalankan oleh perayu-perayu adalah termasuk dalam maksud 'pondok setinggan' di bawah Peraturan 2 peraturan-peraturan tersebut (lihat perenggan 10).

(2) Setelah mengambilkira fakta-fakta dan keadaan-keadaan kes ini Mahkamah Persekutuan tidak susah untuk menyimpulkan bahawa bangunan-bangunan yang dibangunkan di atas Hartanah tersebut termasuk dalam maksud 'pondok setinggan' sebagaimana dimaksudkan di bawah Peraturan 2 kerana perayu-perayu tidak dapat menunjukkan bahawa bangunan tersebut dibangunkan mengikut pelan yang diluluskan oleh pihak berkuasa tempatan atau telah dikeluarkan dengan lesen (lihat perenggan 11).

(3) Pengataan bahawa perayu-perayu telah mendiami tanah tanpa gangguan daripada pemilik tanah tidak dapat membantu mengubah status bangunan-bangunan daripada pondok-pondok setingan sebagai ganti kepada kelulusan yang diperlukan. Walaupun jika bangunan-bangunan dibina dengan kebenaran pemilik tanah, selagi mana mereka tidak menurut dengan pelan yang diluluskan oleh pihak berkuasa tempatan mereka masih lagi termasuk dalam maksud 'pondok setinggan' di bawah Peraturan 10 (lihat perenggan 11).

(4) Meskipun fakta bahawa s 72 Akta Jalan, Parit dan Bangunan 1974 dan s 30 Akta Perancang Bandar dan Desa 1976, kedua-dua memerlukan tempoh 30 hari diberikan setakat berkenaan notis pengambilan, ia adalah penting diingati bahawa:

(a) Kewujudan Peraturan-peraturan tersebut disebabkan oleh Ordinan No. 1 dan Ordinan No. 2 Ordinan Darurat (Kuasa-kuasa Perlu) 1969 yang kemudiannya diulangi dengan Ordinan Darurat (Kuasa-kuasa Perlu) 1979 yang berkuatkuasa pada 20 Februari 1979 (Akta 1979) (lihat perenggan 15).

(b) Seksyen 2(4) Akta 1979 dengan jelasnya menyatakan bahawa peraturan-peraturan seperti itu 'akan berkuatkuasa walaupun terdapat sesuatu yang tidak selari terkandung dalam sebarang undang-undang bertulis, termasuklah Perlembagaan setiap Negeri' (lihat perenggan 17).

(c) Peraturan-peraturan tersebut tidak pernah dimansuhkan (lihat perenggan 18).

(5) Adalah menjadi pandangan mahkamah ini bahawa Peraturan tersebut hendaklah berkuatkuasa meskipun terdapat peruntukan-peruntukan dalam undang-undang bertulis terutamanya Akta Jalan, Saliran dan Bangunan 1974 dan Akta Perancangan Bandar dan Desa 1976 (lihat perenggan 19).

(6) Di bawah keadaan-keadaan ini, Peraturan-peraturan tersebut hendaklah dikuatkuasakan meskipun terdapat peruntukkan-peruntukkan undang-undang bertulis. Untuk sebab yang dinyatakan di atas, mahkamah ini telah mencapai keputusan bahawa notis tersebut yang berasal daripada Peraturan-peraturan tersebut adalah dikeluarkan secara sah dan boleh dikuatkuasakan dari segi undang-undang meskipun terdapat peruntukkan-peruntukkan s 72 Akta Jalan Parit dan Bangunan 1974 dan s 30 Akta Perancangan Bandar dan Desa 1976 (lihat perenggan 19).]

Notes

For cases on breach of building contract, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2763–2786.

Legislation referred to

Essential (Clearance of Squatters) Regulations 1969 reg 10
Street Drainage and Building Act 1974 s 72
Town and Country Planning Act 1976 s 30

Appeal from: Civil Appeal No B-01–67 of 2004 (Court of Appeal, Putrajaya)

CK Teng (Teng Chang Khim & Co) for the appellants.
S Suresh (Rastam Singa & Co.) for the respondents.

Azmel FCJ (delivering judgment of the court):

[1] The Federal Court granted leave to the appellants to appeal to the Federal Court based on the following question:

> Whether the reg 10 of the Essential (Clearance of Squatters) Regulations 1969 is subject to or inconsistent with s 72 of the Street Drainage and Building Act 1974 and s 30 of the Town and Country Planning Act 1976 and therefore renders the seven-day notice issued under that regulation without first complying with s 72 and s 30 null and void.

BACKGROUND

[2] The appellants are individuals who are de facto occupiers of two pieces of land known as GRN 43019, Lot 37448 and GM 1849, Lot No 17494 Mukim Kapar, Daerah Klang, Selangor ('the said property'). At the material time the owner of the said property is a company named Hock Hup Developments Sdn Bhd (now renamed as Ken Rimba Jaya Sdn Bhd).

A **[3]** The first respondent is the Mayor of the Shah Alam City Council whereas the second respondent is the Shah Alam City Council, a local authority within the meaning of the Local Government Act 1976.

B **[4]** On 15 October 2003, the respondents served notices pursuant to reg 10 of the Essential (Clearance of Squatters) Regulations 1969 ('the said Regulations') on the first to the ninth appellants. On 16 October 2003, similar notices were served on the 10th to the 12th appellants. These notices basically informed the appellants that they have constructed or are occupying squatter huts on the said property and have committed an offence under the **C** said Regulations.

[5] As such, they were required within seven days from the date of the notices to remove any person or moveable property and demolish their respective squatter huts. It was stated in the notices that if they failed to **D** comply with the notice, the respondents would take the necessary action without further notice.

[6] On 21 October 2003, the appellants filed an originating summons in **E** the Shah Alam High Court against the respondents and prayed for the following reliefs namely:

(i) that the said notices issued by the respondents under reg 10 of the said Regulations be declared as null and void; and

F (ii) that the respondents be restrained from evicting the appellants by any manner whatsoever from the said property including harassing and threatening the respondents.

[7] On 7 July 2004, the learned High Court judge granted the declaration **G** prayed for, together with the injunction.

[8] On an appeal by the respondents, the Court of Appeal by a majority decision on 9 February 2007 reversed the decision of the High Court and set aside the orders which had been granted through the originating summons. **H** Hence, the appeal to this court.

[9] A copy of the said notices that were served on the appellants was worded as follow:

I PERATURAN-PERATURAN PERLU

(PEMBERSIHAN SETINGGAN-SETINGGAN 1969)

NOTIS MEROBOH BANGUNAN

(PERATURAN 10)

Adalah dimaklumkan bahawa satu siasatan/bancian telah dijalankan dan didapati tuan/puan telah mendirikan/mendiami binaan setinggan di — (address) — tanpa kebenaran dari pihak Majlis.

Oleh yang demikian, tuan/puan didapati melakukan kesalahan dibawah Peraturan-Peraturan Perlu (Pembersihan Setinggan-setinggan) 1969. Tuan/Puan dikehendaki dalam tempoh 7 hari dari tarikh notis ini supaya menjalankan kerja-kerja yang perlu bagi maksud itu iaitu:-

(a) mengalihkan apa-apa orang atau harta alih; dan

(b) merobohkan apa-apa binaan diatas tanah tersebut.

SILA AMBIL PERHATIAN sekiranya tuan/puan didapati gagal/engkar mematuhi notis ini sehingga luput tempoh masa yang ditetapkan, pihak Majlis boleh mengambil tindakan tanpa sebarang notis selanjutnya ditetapkan lagi.

Apa-apa kerosakan dan kerugian adalah tanggungjawab tuan/Puan sendiri. Pihak Majlis tidak akan memberi sebarang tuntutan gantirugi. Pihak Majlis juga akan menuntut kos dalam mengambil tindakan diatas.

(Signed)

b/p Datuk Bandar

Majlis Bandaraya Shah Alam

PENERIMA NOTIS

Saya — (name) — mengaku telah menerima notis seperti di atas

(sign)

Tarikh:

No Kad Pengenalan:

[10] The above notice clearly states that the seven days' notice was given to the appellants to vacate and demolish the said squatter huts. This is in conformity with reg 10 of the said Regulations which reads:

10(1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding Regulations 6 and 7, the local authority, its agents or servants may after giving seven days' notice in writing to the occupier:

(a) enter by day or night any private land for the purpose of summarily demolishing any squatter hut; and

(b) removing any person or movable property in any squatter hut; and

(c) summarily demolish any squatter hut on the land.

The first point that needs careful consideration is whether the structure or construction occupied by the appellants come within the meaning of 'squatter hut'. Regulation 2 of the said Regulations defines 'squatter hut' as follows:

A any house, hut, shed, lean-to, shelter, roofed enclosure or any extension or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a license issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land

[11] Having regard to the facts and circumstances of this case we have no difficulty in concluding that the buildings erected on the said property come C within the meaning of 'squatter hut' as defined under reg 2 because the appellants were unable to show that the said building were erected in accordance with a plan approved by the local authority or had been issued with a licence. The contention that they had been in occupation of the land without any interruption by the landowner would not help to change the D status of the buildings from squatter huts in lieu of the necessary approval. To that extent even if the buildings were constructed with the consent of the land owner, so long as they were not in accordance with the plan approved by the local authority they would still come within the meaning of 'squatter hut' under reg 10.

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[12] However, it was strenuously contended by the appellants that s 72 of the Street Drainage and Building Act 1974 ('the 1974 Act') which governs the demolition or removal of unauthorized building and s 30 of the Town and Country Planning Act 1976 ('the 1976 Act') which deals with requisition F notice, states otherwise regarding the time period for the notice. Both Acts lay down a 30 day period time frame. Section 72(1) of the 1974 Act reads:

(1) Where the local authority is satisfied that a building has been erected or is in the course of erection or is about to be erected in contravention of G section 70 or, if such a building has been erected prior to the coming into force of this Act, in contravention of any law then in force relating to buildings and in respect of which building approved under any law was not given subsequently, the local authority may by notice serve on the owner of the land require him to do any one or more of the H following acts-fa) to abstain from commencing or;

(a) proceeding with the erection of such building;

(b) to demolish such building within such time as the local authority may specify; and

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(c) to take steps as may be ordered by the local authority.

(6) Where the building is to be demolished by the local authority, it shall give *at least thirty days notice* to the occupants of the building requiring them to vacate the building and the local authority may after the lapse of the period enter the building and remove any person or movable property found therein.

(Emphasis added.)

[13] Section 30(1) of the 1976 Act on the other hand reads:

(1) If the local planning authority is satisfied:

(a) that any use of land should be discontinued; or

(b) that conditions should be imposed on the continued use thereof; or

(c) that any building or works on any land should be altered or removed.

the local planning authority may, with the approval of the State Authority, by a requisition notice served on the owner of the land

(i) require the discontinuance of that use; or

(ii) impose such conditions for the continued use of the land as may be specified in the requisition notice; or

(iii) require such steps as may be specified in the requisition notice to be taken for the alteration or removal of the building or works;

and the owner shall, within such period as may be specified in the requisition notice, *not being less than one month* from the date of service of the notice, comply with such requirements or conditions.

(Emphasis added.)

[14] The focal issue that needs careful consideration now is whether the respondents were correct in giving a seven day notice under reg 10 of the said Regulations. In order to arrive at a fair and just finding, it is therefore essential to trace the history as to how the said Regulations came into being.

[15] The existence of the said Regulations were brought about by virtue of Ordinance No 1 and Ordinance No 2 Emergency (Essential Powers)

Ordinance 1969, which was subsequently repealed by the Emergency (Essential Powers) 1979 which came into force on 20 February 1979 ('the 1979 Act').

[16] The 1979 Act validates all subsidiary legislation made or purporting to have been made under the 1969 Ordinance including the said Regulations which was created to deal with the problem of squatters and squatter huts. The preamble of the 1979 Act reads:

> EMERGENCY (ESSENTIAL POWERS) ACT 1979 An Act under Clause (5) of Article 150 of the Federal Constitution to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance, 1969, and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after the 20th February 1971, and for the validation of all acts and things done under the said Ordinance or any subsidiary legislation made or purporting to have been made thereunder, and to provide formatters connected therewith.

[17] From the above scenario it is quite clear that even though the 1969 Ordinance had been repealed, the subsidiary legislations that had been created under it including the said Regulations continued to be validated by virtue of the 1979 Act. The relevant provision regarding this matter is s 2(4) of the 1979 Act which reads:

> (4) An Essential Regulation, and any order, rule, or by-law duly made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution of any State, other than this Act or in any instrument having effect by virtue of any written law other than this Act (emphasis added).

[18] Hence there should be no doubts whatsoever that the said Regulations shall have effect notwithstanding the provisions of any other written law particularly the 1974 Act and the 1976 Act. It must also be noted that the Regulations have never been repealed. It continues to exist even after the repeal of the 1969 Emergency Ordinance.

[19] We are therefore of the view that the said Regulations shall have effect notwithstanding the provisions of any other written law. For the reasons as mentioned above, we arrived at the finding that the said notice which was derived from the said Regulations was validly issued and enforceable in law notwithstanding the provisions of s 72 of the 1974 Act and s 30 of the 1976 Act. In the circumstances, our answer to the question posed would be in the negative. The appeal is therefore dismissed with costs.

[20] My learned brothers Abdul Hamid Mohamad FCJ (now PCA) and Nik Hashim FCJ have seen this judgment in draft and have expressed their agreement to it.

Appeal dismissed with costs.

Reported by Dipendra Harshad Rai